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Anthony J. Hood, Chairman,
District of Columbia Zoning Commission
441 4th Street, N.W. – Suite 200S
Washington, D. C. 20001

**Re: ZC 06-11Y/06-12Y – Modification of Consequence,
2100 Pennsylvania Avenue, Square 75, Lot 52:
Supplemental Response of the West End Citizens Ass’n**

Dear Chairman Hood and Members of the Commission:

This letter is submitted on behalf of the West End Citizens Association (WECA), a party to this case. WECA is on record in opposition to the Applicant’s request for a modification of consequence. **Ex. 5.** WECA’s position is that the proposed modification of consequence should properly be treated as a modification of significance, and thus the subject of a public hearing. WECA has asked me to respond to OP’s approval recommendation, **Ex. 6**, and the Applicant’s recent “Supplemental Statement” in support of the Application. **Ex. 9** (Mar. 16, 2023).

The Application is presented as a proposed modification to the design of the building approved by the Commission for the addition of new retail for those residing in the community (the “Project”). OP recommends approval, focusing on only the physical aspects of what is proposed for modification: larger signage than originally planned, and removal of a building entrance. **Ex. 6** at 2. OP concludes that “the proposed changes are modifications to the final design approved by the Commission,” and would “help to achieve” the original PUD goal of “providing a high quality design with active uses on the ground floor which complement the I Street retail corridor.” *Id.* at 3.

This analysis is significantly flawed, as it ignores how the modification is inconsistent with a key Project requirement: provide at least 30,000 sq. ft. of new retail space in the community. More specifically, the Commission Order approving the Project, **Ex. 2C**, states that its approval is “[i]n consideration of the Findings of Fact and Conclusions of Law contained in this Order.” *Id.* at 28. Central to the nature of the current Application is Commission Finding of Fact 32 in that Order, as follows:

The **retail space**, which will total approximately **30,000 square feet**, will permit the Applicant to attract **neighborhood-defining retail** opportunities along I Street and Pennsylvania Avenue which will enhance the intended I Street retail corridor contemplated in the Campus Plan. “Retail” uses in the Project will include the arts, design and creation; daytime care; eating and drinking establishments; entertainment, assembly and performing arts; retail; and general or financial service use categories, except that financial services will not be located along the Project’s I Street frontage.

Ex. 2C at 5-6 (¶32) (emphasis added).

The two physical modifications, rather than furthering this end result, ensure its failure. The changes are designed to accommodate the relocation of the University’s Campus Store, a current retail facility located in another square, to the area intended for new retail uses. The relocation will reportedly absorb 16,650 square feet (or 55.5%) of the 30,000 square feet of retail space that was the basis for the Commission’s approval of the Project. That this can be done with relatively minor physical modifications to the building is beside the point.

The broadly stated definitional terms, “modification of consequence” and “modification of significance” confirm the fundamental flaw in defense of the Application as a modification of consequence. Modifications of consequence include, for example, “a redesign or relocation of architectural elements.” Z § 703.4. That is just how the Applicant wants the Commission to view its proposal. Modifications of significance include “a change to proffered public benefits and amenities.” Z § 703.6. But in this case the physical modifications are to facilitate a switch from approval of 30,000 square feet of new retail to relocation of existing retail in over half the required retail space. When one just scratches the surface of the requested physical changes, it is clear that what is sought is a change to the Project’s proffered public benefits and amenities, i.e., a modification of significance.

More specifically, in gaining the Commission’s approval of the Project, the Applicant relied on, and the Commission accepted, the claim that the Project would advance the Comprehensive Plan’s Economic Development Element Policy ED-3.1.1., “Neighborhood Commercial Viability.” That Policy states as follows (emphasis added):

Promote the vitality and diversity of Washington’s neighborhood commercial areas by retaining existing business, **attracting new businesses**, and improving the mix of goods and services available to residents.

Ex. 2C at 13-14 (¶ 54f.). And, again as accepted by the Commission in the approval Order, the Applicant claimed that providing the new retail space in the specified categories would be among the Project’s amenities and public benefits. *Id.* at 8-9 (¶ 43.i.).

The Applicant claims that there is no requirement in the PUD approval that the retail be “new,” and no prohibition on University-related uses within that retail space.” Ex. 9 at 3. These arguments are wrong. As to the latter point, the list of approved uses of the new space are set forth in the approval Order, as detailed above. This list is, quite plainly and intentionally, a prescriptive

list, not a merely illustrative one. The list does not include the prospect of relocation into the new space of existing University uses located elsewhere. But even if there were some way to justify relocation of some University retail within the new retail space as within the intent of the Project approval Order, there is no possible justification to extending that reasoning to the swallowing up of more than half the entire space, especially when that possibility was never suggested in the Project approval process as a possible outcome.

On the former point, it appears to be based on the absence of the modifier “new” from the Decision Section of the Project approval Order. But that is simply of no consequence in the larger context of the Commission’s Project approval. As detailed above, Project approval is grounded in the benefit to the community of providing 30,000 square feet of “neighborhood-defining” retail. This requirement is not achieved by fulfilling half of it with mere relocation and expansion of existing retail that primarily serves the University Community, not the larger neighborhood. Further, Policy ED 3.1.1.1 of “improving the mix of goods and services available to residents” is retarded, not advanced, when less than half the required new neighborhood-serving retail is added to the existing “mix of goods and services available to residents.” And Policy ED 3.1.1. of “retaining existing businesses” is not advanced in that the Campus Store, wherever it may be located, is not going away; it is an essential component of the Campus. In short, had the Commission employed the modifier “new” in its description of what retail was to be provided, it would have been, in the context of Project approval, a superfluous adjective that does no more than confirm what was intended.

In sum, what is contemplated by the Application is quite clearly a “modification of significance.” WECA contends it makes no sense to allow the Project to lose half the intended new retail space by approving the Application. But even if the Commission were to conclude that this is a proposition about which reasonable minds might differ, that points squarely to the need for a public hearing where all the facts and circumstances may be aired. In fact, no reasonable mind can conclude, in the specific context of this case, that this matter should be decided without a public hearing, which means treating the Application for what it really is—a request for a modification of significance.

Sincerely,



David W. Brown
Knopf & Brown
Counsel, West End Citizens Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 24, 2023, a copy of the foregoing letter was delivered electronically to the following:

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